

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Shirley Lightfoot	:	
	:	
v.	:	C-2017-2587684
	:	
Interstate Gas Supply, Inc. d/b/a IGS Energy	:	
and PPL Electric Utilities Corp.	:	

INITIAL DECISION

Before
Benjamin J. Myers
Administrative Law Judge

INTRODUCTION

A customer filed a complaint against her electric utility and electric supplier alleging that the electric utility improperly enrolled her as a customer with the supplier, that there were incorrect charges on her electric account due to overbilling and requesting that the Pennsylvania Public Utility Commission (Commission) order a payment arrangement for the unpaid balance of her account. This decision sustains the complaint, in part, to the extent that the complaint seeks a Commission-ordered payment arrangement. It however denies, in part, the remainder of the complaint because the customer has failed to satisfy her burden that the utility violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff.

HISTORY OF THE PROCEEDING

On February 7, 2017, Shirley Lightfoot (Complainant), filed a formal complaint with the Commission alleging that PPL Electric Utilities Corporation (Respondent or PPL)

improperly enrolled the Complainant as a customer of Interstate Gas Supply, Inc. d/b/a IGS Energy (Respondent or IGS) and that afterwards she experienced periods of excessively high bills at her residence. The Complainant also requested that she be given a Commission-ordered payment arrangement for her outstanding account balance which was more reasonable than a payment arrangement already given to her by PPL.

On February 22, 2017, IGS filed an answer to the complaint. This answer admitted or denied the various averments of the complaint. IGS admitted that Complainant had been a customer for a period of time, however specifically denied that Complainant had ever been incorrectly or improperly switched to IGS as her electric supplier.

On February 27, 2017, PPL filed an answer to the complaint. PPL also admitted or denied the various averments of the complaint. Specifically, PPL denied the allegation that the Complainant had been incorrectly or improperly enrolled with IGS as her electric supplier and denied that the Complainant had been subject to any incorrect charges on her bill. PPL further indicated that it had already provided the Complainant with a payment plan for her outstanding balance and that the terms of that plan were reasonable and the most advantageous that PPL was able to offer the Complainant.

By hearing notice dated April 27, 2017, the Commission scheduled a telephonic hearing for this matter on June 6, 2017, at 10:00 a.m. and assigned the case to the undersigned. A prehearing order was issued on May 8, 2017, addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

On May 30, 2017, the Complainant sent correspondence to the Office of Administrative Law Judge requesting a continuance of the June 6, 2017 hearing because of a conflict in her work schedule. The information received also indicated that neither of the Respondents objected to such a continuance. Based upon the information provided, a June 2, 2017 continuance order was issued and a continuance was granted and a cancellation notice was also sent to each of the parties confirming the cancellation of the June 6, 2017 hearing.

On June 30, 2017, a second hearing notice was issued rescheduling this matter for a call-in telephonic hearing on July 25, 2017. The initial hearing was conducted as scheduled on that date. The Complainant appeared *pro se* and testified. Todd Stewart, Esquire represented IGS which presented one witness who sponsored three exhibits which were admitted into the record. Kimberly Krupka, Esquire represented PPL which presented one witness who sponsored three exhibits which were admitted into the record. The initial hearing resulted in a transcript of 120 pages. The record closed on August 16, 2017, the date the transcript was filed with the Secretary's Bureau. For the reasons set forth below, the complaint will be sustained, in part, and denied, in part.

FINDINGS OF FACT

1. The Complainant in this case is Shirley Lightfoot.
2. The Respondents in this case are Interstate Gas Supply, Inc. d/b/a IGS Energy and PPL Electric Utilities Corporation.
3. On July 21, 2014 the Complainant made contact with PPL to begin service at her residence located at 6022 Sandy Lane, Tobyhanna, Pennsylvania. N.T. 53. PPL Ex. 2.
4. The Complainant indicated that she owned the residence, was the sole user and occupant and that the residence had electric heat. PPL Ex. 2.
5. The Complainant was given the opportunity to select her electric supplier and was provided information on PPL's standard offer which included information on the lowest electric rate available at that time. N.T. 53, 54. PPL Ex. 2.
6. The Complainant indicated that she wished to accept the standard offer but also indicated that she had "no preference" as to which electric supplier would provide her electric service. N.T. 54. PPL Ex. 2.

7. Because the Complainant had “no preference” as to her electric supplier, the Complainant was enrolled with IGS as her electric supplier with the lowest electric rate. N.T. 54.

8. On both May 8, 2015 and May 29, 2015, IGS sent the Complainant letters noting that her fixed rate service for the first year was coming to an end and that the Complainant would be placed on the available electric rate thereafter. N.T. 98-99.

9. On October 16, 2015, the Complainant contacted PPL and indicated that she did not remember selecting IGS as her electric supplier. N.T. 56.

10. At that time, the electric rate for IGS was higher than the electric rate being offered by PPL. N.T. 57.

11. The Complainant indicated that she wished to be switched to PPL as her electric supplier. N.T. 58.

12. The Complainant also contacted IGS on October 16, 2015 to terminate her service with IGS. N.T. 99-100.

13. As of October 16, 2015 the Complainant’s new electric supplier was PPL. N.T. 58, 99-100.

14. IGS was the Complainant’s electric supplier from July 22, 2014 until October 16, 2015. N.T. 53, 58, 99-100.

15. During the 15-month period Complainant was an IGS customer, she saved \$484 in total electric costs compared to the costs she would have incurred if PPL had been her supplier during this time. N.T. 94-95.

16. On February 2, 2016 the Complainant contacted PPL regarding concerns about her electric usage. N.T. 60.

17. At that time, Complainant stated she had turned off the electric baseboard heaters in her home at the breakers because of previous large bills and as a result she had experienced a decrease in electric consumption since the prior year. N.T. 60.

18. The Complainant also stated that she had been using an electric space heater in her kitchen to prevent her kitchen pipes from freezing. N.T. 60.

19. The service address is a second home owned by the Complainant which she stays at between four and five nights a month. N.T. 21-22.

20. The Complainant's household consists solely of herself. N.T. 37.

21. The Complainant's home was built in the 1970's, is approximately 2,500 square feet in size and has minimum or no insulation. N.T. 23.

22. The Complainant's home has electric floorboard heat, main electric hot water tank, an on-demand hot water tank in a bathroom and an electric stove. N.Y. 24-25.

23. The Complainant's home is situated on a crawl space. N.T. 26.

24. During a previous winter a pipe in the crawl space froze and burst so the Complainant had the pipes wrapped during the first year of her ownership. N.T. 26, 47.

25. The Complainant was also using an electric space heater in her kitchen for a period of one week to keep her kitchen pipes from freezing. N.T. 46.

26. PPL tested the Complainant's electric meter and determined its accuracy to be 99.859%. N.T. 69.

27. The Complainant has a gross annual salary of \$40,000 per year. N.T. 40.

DISCUSSION

The Complainant has raised three issues within her complaint: 1) That she was improperly enrolled as a customer with IGS as her electric supplier. 2) That bills she received for her electric service were incorrect and excessively high for the amount of time she actually spent living at the service address. 3) That she be provided with a Commission-ordered payment arrangement with terms more advantageous to those given to her by PPL.

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990). “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code, the Commission’s regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, the Complainant has raised three issues in her complaint and therefore has the burden of proof to show that she was improperly enrolled with IGS as her electric supplier, that her electric bills were incorrect or too high compared to her actual monthly usage and that she qualifies for a Commission-ordered payment arrangement.

Complainant’s Enrollment With IGS

The Complainant has alleged that when she contacted PPL to become a customer, and begin electric service at her residence, PPL improperly enrolled her as a customer with IGS as her electric supplier without her knowledge or consent. The Commission’s regulations at 52 Pa.Code § 57.172 *et. seq.* outline the various procedures by which a customer is enrolled or switched with an electric supplier.

The evidence of record indicates that at the time the Complainant began service with PPL in July of 2014, she was provided electric rate information and informed she could choose her

electric supplier. N.T. 51-53. PPL's witness credibly testified that at the time the Complainant initiated service for her residence, PPL extended its standard offer to her. N.T. 52. While the Complainant accepted the offer, the evidence indicates she had "no preference" as to the specific choice of her supplier. N.T. 53. As such, the Complainant was enrolled with IGS as a supplier with the lowest rate at the time of enrollment. N.T. 51, 94. The Complainant remained a customer of IGS until October 16, 2015, at which time she informed both PPL and IGS that she wished to switch to PPL as her supplier moving forward. N.T. 55, 99-100.

The Complainant's simple assertion that she was enrolled as an IGS customer without her knowledge or consent at the time she became a PPL customer is insufficient to meet her burden. The testimony and evidence presented by both witnesses for PPL and IGS contradicts the Complainant's general assertion. Both witnesses testified that the Complainant's enrollment was done with the Complainant's knowledge and approval and that subsequent correspondence memorializing the Complainant's enrollment was sent to her. N.T. 55, 99.

The Complainant admitted at the time of hearing that in October of 2015 she allegedly became aware that IGS was her supplier and made contact with both PPL and IGS to switch back to PPL. N.T. 14. Despite the Complainant allegedly having awareness of this unauthorized enrollment since October of 2015, the Complainant did not file a complaint with the Commission raising such allegations until February of 2017.

In addition, the witness for IGS credibly testified that as a result of the Complainant's enrollment with IGS as her supplier between July 2014 and October 2015, the Complainant realized an overall savings of \$484 on her electric bill compared to the charges she would have received had she been enrolled with PPL as her supplier during this same period of time. N.T. 94-95. Given that the remainder of the allegations raised by the Complainant relate to the affordability of a payment arrangement and being overcharged for her electric service, it is somewhat contradictory for the Complainant to argue that her enrollment with IGS as her supplier was done without her knowledge and consent when that same enrollment netted the Complainant a savings of \$484.

In light of the credible testimony and evidence presented by the witnesses for PPL and IGS regarding the Complainant's enrollment, the Complainant's general assertion that her enrollment was done without her knowledge and consent is insufficient to meet her burden. There is no evidence to show that the Complainant was improperly enrolled with IGS as her supplier or that her enrollment otherwise violated the requirements of the Commission's regulations at 52 Pa.Code § 57.172 *et. seq.* Those portions of the complaint relating to this enrollment are therefore denied.

Complainant's Monthly Bill Amount

The second issue raised by the Complainant related to the amount of her monthly bills. N.T. 12. The Complainant alleged that these bills were too high and far exceed the electric usage she would incur on a monthly basis because she only spends between four and five nights per month at the service address. N.T. 12, 22.

Matters relating to allegations of high or overbilling are governed by Waldron v. Philadelphia Electric Co., 54 Pa. PUC 98 (1980) (Waldron). In Waldron, the Commission concluded that a complainant may establish a prima facie overbilling case by showing that: (1) the number of occupants of the household has not changed; (2) the potential for energy utilization is low; and (3) the prior billing history shows no previous abnormalities. If the Complainants have submitted such evidence, the burden of going forward with the evidence shifts to the Respondent. If the Respondent fails to rebut the Complainants' evidence, then the Complainants would prevail. If the Respondent places evidence into the record to rebut the Complainants' prima facie case, the burden of going forward with the evidence shifts back to the Complainants. In order to satisfy the burden of proof, the Complainants must rebut the Respondent's evidence by a preponderance of the evidence.

Although the burden of going forward with the evidence may shift from one party to another during a proceeding, the "burden of proof" never shifts. It always remains on the Complainants. Replogle v. Pennsylvania Electric Co., 54 Pa. PUC 528 (1980).

The Commonwealth Court broadened the Commission's ruling in Waldron in Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlt. 2001) (Milkie). The Commonwealth Court held that the Commission's requirement that a complainant must establish certain specific elements in order to make out a prima facie case was too restrictive. The Commonwealth Court ruled that even where the utility has presented evidence that it has tested the customer's meter and found it to be accurate, the customer may prove his or her case by circumstantial evidence that the metered usage exceeded actual usage.

Subsequent to the Milkie decision, the Commission has determined that in an overbilling case, it may consider the billing history of the account, any change in usage pattern or any other relevant facts or circumstances that come to light during the proceeding. Bennett v. Peoples Natural Gas Co., Docket No. C-2009-2122979 (Order entered October 13, 2010); Thomas v. PECO Energy Co., Docket No. C-2010-2187197 (Order entered November 15, 2011). The Waldron rule protects the Complainants from dismissal because of their inability to produce direct proof that their meter has malfunctioned.

As noted above, the burden of proof always remains with the Complainants and if the Respondent presents evidence that is co-equal or greater in weight than the Complainants', the Complainants will not have met their burden of proof. The Commonwealth Court in Milkie emphasized that the mere proof by the utility that its measuring devices are accurate is no longer the sole determinant of whether there is a basis to a complaint of overbilling, citing Burleson v. Pa. Pub. Util. Comm'n, 461 A.2d 1234 (Pa. 1983).

In this case, the Complainant makes a general allegation that she believes she has been overbilled for the service provided to her residence. To support this allegation, the Complainant testified that she only stays at the service address between four and five nights per month as a result of her position as a flight attendant and her second home in Michigan. N.T. 22, 27. The only other evidence the Complainant presented to corroborate the assertion that she had been overbilled was her testimony that after her bills began to increase, she took steps to reduce her electric usage but felt that despite those efforts she continued to be overbilled. N.T. 22.

The Commission has considered circumstances where a complainant contends that their utility bill is inordinately large as compared to their perceived utility usage. In Richard Kirby v. PPL Electric Utilities Corporation, the Commission ruled that,

The Complainant's testimony consisted solely of his opinion that these charges are too high. Regardless of how earnestly Complainant believes the complaint allegations to be true, personal opinions or perceptions do not constitute substantial evidence sufficient to permit him to sustain his burden of proof.

Richard Kirby v. PPL Electric Utilities Corporation, Docket No. C-20066297 (Final Order entered November 16, 2006) (citing PA Bureau of Corrections v. City of Pittsburgh, 532 A.2d 12 (1987)).

The Complainant has again failed to meet her burden. First, the Complainant was unable to provide any specific testimony or evidence to identify the specific points in time that she felt she had been overbilled. N.T. 29. The Complainant could only generally infer that this alleged overbilling was occurring "in the winter time". When asked to identify specific months the Complainant believed her bill was too high compared to the amount of usage she would have experienced, the Complainant was unable to identify a single example other than to simply reference large billing figures. N.T. 13, 29-30.

Second, the Complainant has failed to show that her potential for energy usage was low. While the evidence indicates the Complainant may only stay at the service address four to five nights per month, this same evidence indicates that the Complainant's potential energy usage at the residence is very high because of the characteristics of the residence. The Complainant indicated that the residence is very large at 2,500 square feet and heated with electric heat. N.T. 23-24. The residence was built with "no or minimal insulation". N.T. 23. It was built over a crawl space and on at least one occasion experienced a frozen and burst pipe. N.T. 26, 46. The Complainant further admitted that she had resorted to utilizing an electric space heater in the residence in an attempt to avoid frozen pipes. N.T. 46.

While there is no doubt that the Complainant may have experienced high monthly electric bills at certain points in the past, particularly during cold winter months, the mere fact that she has done so does not in and of itself mean the Complainant has been overbilled. The Complainant herself indicated that this residence has no, or minimal, insulation and that all of her heating needs, and efforts to prevent frozen pipes, were done via electric baseboard heat and space heaters. This does not evidence a residence where the potential for energy utilization is low. The Complainant has failed to meet her burden. Those portions of the complaint relating to overbilling are therefore denied.

Complainant's Payment Arrangement Request

The last issue raised by the Complainant relates to a payment arrangement. The evidence indicates that PPL previously provided the Complainant with a payment arrangement which the Complainant felt was not reasonable.

However they manage their household budget, a complainant will have to pay the utility for the services they consume. By law, a public utility is entitled to receive payment for the service it provides. Scaccia v. West Penn Power Co., 55 Pa. PUC 637 (1982). Kea v. Peoples Natural Gas Co., 60 Pa. PUC 215 (1985); Mill v. Pa. Pub. Util. Comm'n, 447 A.2d 1100 (Pa.Cmwlth. 1982). The utility has the right to bill and receive payment for the utility service actually supplied. 66 Pa.C.S. § 1303, Neal v. Philadelphia Gas Works, Docket No. Z-00971874, (Order entered January 4, 2002); Angie's Bar v. Duquesne Light Co., 72 Pa. PUC 213 (1990). All customers are obligated to pay for utility service. Otherwise, unpaid bills are included in the utility's uncollectible expenses, which all of its remaining customers must pay. Bolt v. Duquesne Light Co., Docket No. Z-8712758 (Order entered April 8, 1988). A payment arrangement, which prevents service termination as long as the Complainant complies with it, is a privilege, not a right. Mandell v. Duquesne Light Co., Docket No. C-20030234, (Order entered March 17, 2004).

The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1418, applies to this proceeding. On December 22, 2014, Act 155 of 2014, reenacting the Responsible

Utility Customer Protection Act, became effective and provides that the Commission has the authority to establish a payment arrangement pursuant to 66 Pa.C.S. § 1405(a), within the strict guidelines set forth in 66 Pa.C.S. § 1405(b). The statute at 66 Pa.C.S. § 1405(a) states:

- (a) **General Rule.**-The commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers. The commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established by this chapter.

The Commission may establish a payment arrangement between a public utility and a customer only within the limits established by 66 Pa.C.S. §§ 1401-1418. In order to be eligible for a payment arrangement, the Complainant must be a “customer” or “applicant” as defined by 66 Pa.C.S. § 1403. If the Complainant is not a “customer” or “applicant”, the Commission is not authorized to establish a payment arrangement between her and the Respondent. In this case, it is undisputed between the parties that Complainant is a customer under 66 Pa.C.S. § 1403 and may therefore be eligible for a payment arrangement.

As noted earlier, the Commission may order a payment arrangement within the strict guidelines set forth in 66 Pa.C.S. § 1405(b) which states as follows:

- (b) **Length of payment arrangements.**--The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment arrangement that is investigated by the commission and is entered into by a public utility and a customer shall not extend beyond:

- (1) Five years for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level.

- (2) Three years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.

(3) One year for customers with a gross monthly household income level exceeding 250% of the Federal poverty level and not more than 300% of the Federal poverty level.

(4) Six months for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.

The Complainant testified that her household consists solely of herself. N.T. 37. She further testified that she has a gross yearly salary of \$40,000 per year. N.T. 39. This means the Complainant has a gross monthly household income of approximately \$3,333 per month.

The 2017 federal poverty guidelines, effective January 31, 2017 and found at Federal Register Vol. 82, No. 19 January 31, 2017 p. 8832, provide that for a household of one, 300% of the federal poverty level is \$3,015.01 per month. The Complainant's monthly household income of \$3,333 places her at greater than 300% of the federal poverty level. Under the aforesaid section of law, the Complainant qualifies for a Level 4 payment arrangement that would allow the Complainant 6 months to pay her unpaid account balance. Therefore, to the extent that the Complainant requests a payment arrangement, that portion of the complaint is therefore granted.

It is noted that the Complainant also requests that any payment arrangement she receives be more affordable than the terms and conditions of any payment arrangement already offered to her by PPL. N.T. 13.

Regardless of the terms of any payment arrangement PPL may have already offered the Complainant, the Commission may only order a payment arrangement within the strict guidelines set forth in 66 Pa.C.S. § 1405(b). These guidelines prescribe that with a household consisting of one individual and a monthly household income of \$3,333 the Complainant is limited to the terms and conditions of the Level 4 payment arrangement already described. In short, this is the only Commission-ordered payment arrangement available to the Complainant based upon her circumstance.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.
2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).
3. The Complainant has failed to establish that she was improperly enrolled as a customer with IGS as her electric supplier in July 2014. 52 Pa.Code § 57.172 *et. seq.*
4. The Complainant has failed to establish that she has been overbilled for her electric service. Waldron v. Philadelphia Electric Co., 54 Pa. PUC 98 (1980).
5. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1418, applies to this proceeding.
6. The Commission is authorized to establish a payment arrangement between a public utility and a customer. 66 Pa.C.S. § 1405(a).
7. The Complainant has met her burden of showing that she is entitled to a payment arrangement. 66 Pa.C.S. §1405(a).
8. The Complainant is entitled to a Level 4 payment arrangement for the outstanding balance of her account. 66 Pa.C.S. § 1405(b).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by Shirley Lightfoot against PPL Electric Utilities Corporation and Interstate Gas Supply, Inc. d/b/a IGS Energy at Docket No. C-2017-2587684 is sustained, in part, as it relates to Complainant's request for a payment arrangement, and denied, in part, as it relates to the remainder of the complaint.

2. That Shirley Lightfoot shall pay PPL Electric Utilities Corporation on the date due for the payment of each monthly bill, the regular budget amount of the bills as they come due, plus 1/6th of the arrearage owed on her account to be calculated as of the date the Pennsylvania Public Utility Commission enters its Order in this case. These payments shall commence with the first monthly bill received after entry of the Pennsylvania Public Utility Commission's Order in this case and continue on the due date for the payment of each regular monthly bill thereafter, for a period of six months or until the arrearage on this account has been paid in full – whichever occurs first.

3. That as long as Shirley Lightfoot complies with the terms of this Order, Pennsylvania Electric Company shall not suspend or terminate her utility service except for valid safety or emergency reasons.

4. That if Shirley Lightfoot fails to comply with the terms of this Order, Pennsylvania Electric Company is authorized to suspend or terminate her utility service in compliance with all applicable tariff and regulatory requirements, and to take any other action permitted by law.

